

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Application of)

WILBURN INDUSTRIES, INC.)

Application for Construction)
Permit for a new FM station,)
Channel 280A, Westerville, Ohio)

File No. BPH-911230MC

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Mass Media Bureau

OPPOSITION TO SUPPLEMENT

Wilburn Industries, Inc. ("Wilburn"), by its attorneys, hereby submits its Opposition to the "Supplement to Petition to Deny and Dismiss" filed by Ohio Radio Associates, Inc. ("ORA") on January 25, 1993. In support thereof, the following is stated:

In its most recent submission, ORA again argues that Wilburn's application must be dismissed because Wilburn intends to serve Westerville, Ohio, on Channel 280A, using the technical facilities which previously were used by Station WBBY-FM when it operated on that channel. According to ORA, WBBY-FM itself could properly operate from that site when the Commission's revised spacing regulations created a short-spacing to WTTT-FM, Tiffin, Ohio, but no applicant seeking to replace WBBY-FM's service could

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ORA now seeks to buttress its argument by relying on language in John M. Salov, FCC 92-565, released January 8, 1993. In Salov, the applicant filed his application to operate on Channel 249A at Hudson, Michigan, although: (1) the allotment in question was short-spaced, (2) the allotment was subject to a pending rulemaking which contemplated the deletion of the short-spaced channel, (3) no filing window was open when the

silent. Finally, whereas the applicant in Salov had clear notice that his application would be unacceptable, no such notice was provided in this case, where the Commission retained the allotment, imposed no site restrictions and invited applications by opening a filing window.

ORA's reliance on Salov is misplaced, as well, because the issue in that case is patently distinguishable from the one raised by ORA. In Salov, the Commission rejected an argument that a short-spaced allotment could be "grandfathered" under Sections 73.213 or 73.215 of its Rules, in light of its fundamental and strict policy against short-spaced allotments. Because the allotment itself was unacceptable, the Commission ruled, no applications for that allotment would be accepted. In this case, however, the Westerville allotment is not short-spaced, although certain transmitter sites proposed by applicants may involve short-spacing. As the Commission repeatedly has made clear, short-spaced applications on non-short-spaced channels are acceptable in the appropriate circumstances.

Thus, Wilburn's argument that an applicant may specify a short-spaced site which has been used by a pre-existing facility (i.e., that the location has been "grandfathered") is not undermined by a Commission ruling rejecting the idea that a short-spaced allotment may be grandfathered. ORA's latest pleading therefore does no more than demonstrate its failure to

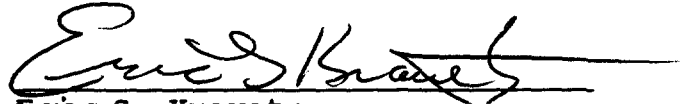
understand the difference between short-spaced allotments and short-spaced sites for fully-spaced allotments. As Wilburn previously has shown at pages 3-4 of its April 9, 1992 Opposition, its application is acceptable and entitled to comparative consideration with that of ORA under any circumstances. In addition, Wilburn may properly specify a site used by a pre-existing facility whose use of such site was grandfathered under the Commission's Rules. ORA's effort to stretch Commission language dealing only with a short-spaced allotment does not rebut either of these correct arguments by Wilburn.

In view of the above, ORA's latest contentions should also be rejected when its Petition is denied.

Respectfully submitted,

WILBURN INDUSTRIES, INC.

By:

A handwritten signature in dark ink, appearing to read "Eric S. Brady", is written over a horizontal line. The signature is fluid and cursive.

CERTIFICATE OF SERVICE

I, Beverles Jenkins, a secretary at the law firm of Brown Nietert, & Kaufman Chartered, do hereby certify that I have, this 1st day of February, 1993, mailed, via first-class U.S. Mail, postage prepaid, a copy of the foregoing "OPPOSITION TO SUPPLEMENT" to the following:

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